

A  
DISCOURSE  
CONCERNING  
High Treason:  
OR, THE  
STATUTE

OF THE  
25<sup>th</sup>. *EDWARD* the Third *de Proditionibus*,  
Considered and explained,

As also  
SHORT TREATISE  
OF  
Misprision of Treason.

Designed for the Instruction of the Ignorant, that  
they prove not Offensive

TO THE  
SUPREME POWER.

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*Reliquæ Leges privatorum hominum commodis prospiciunt, Hac Regia Majestati,  
subditorum vitæ, & publicæ tranquillitate consulit.*

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# DISCOURSE

CONCERNING

## High Treason

OF THE

## STATUTE

OF THE

13th & 14th Chas. II. the Third of Provisions,  
Considered and explained.

As also

## SHORT TREASON

OF

## the Statute of Treason.

By which the Infringement of the Statute, that  
every private not offensive

TO THE

## SOVEREIGN POWER.

By which the Infringement of the Statute, that  
every private not offensive

AS ALSO

THE STATUTE OF TREASON.

## To the Reader.

Reader,

**T**Wo of the principal causes of mens Disobedience against the Civil Government, (as the most Reverend, Learned, and Eloquent Dr. Spratt observes) in his *History of the Royal Society*; are, *First* a misguided Conscience, and opposing the pretended dictates of God against the Commands of the Sovereign; and *Secondly*, an idle Poverty, which drives men into sullenness, melancholly, discontent, and at last into Resistance of lawful Authority.

But the most fruitful Parent of all is Pride, and a lofty conceit of Men's own wisdom; whereby they presently imaagin themselves sufficient to direct and censure all the actions of their Governours, and are better able to manage Kingdoms than those who possess them. This without question is the chief root of all the uneasiness of Subjects to their Princes. The world would be better governed, if so many did not presume that they are fit to sustain the Cares of Government. Transgression of the Law is Idolatry: the reason of men's contemning all Jurisdiction and Power, proceeds from their Idolizing their own Wit: they make their own Prudence Omnipotent; they suppose themselves infallible; they set up their own Opinions, and Worship them. But this vain Idolatry will inevitably fall before a well rectified Judgmen<sup>t</sup>, and true informed understanding: And certainly a Right knowledge of what this Law in particular is concerning Treasons, which is a Law of all others most necessary to be known, because it concerneth (as my Lord Coke saith

to the Reader.

in his Preface to his 3<sup>d</sup> Institutes) the safety of his Majesty, the quiet of the Common-Wealth, and the Life, Honour, Fame, Liberty, Blood, Wife and Posterity of the party accused, besides the forfeiture of his lands, goods, and all that he hath, I say the knowledge of this Law will certainly prevent men from being Factionous and Unruly, Mutinous, Arrogant and implacable of Superiours. And will have a quite contrary effect, inclining them to a just and manly submission to their Betters, and making them Obedient to the Sovereign Power; and this is the way for the Land to have abundance of peace. But Rebellion is as the Sin of VVitchcraft.

By



# DISCOURSE

## CONCERNING

# High Treason:

## OR, THE

# STATUTE

OF THE  
25<sup>th</sup>. *EDWARD* the Third *de Proditionibus*,  
Considered and explained.

### Of High Treason.

**B**Y the Statute of 25 *Edward* 3. cap. 2. *de Proditionibus*, is declared in certain particular cases what Offences shall be taken to be Treason, with this Restriction, that if any other Case supposed to be Treason should happen before any Justices, the Justices should tarry without going to Judgment of the Treason, till the Case be shewed before the King and his Parliament, whether it ought to be adjudged Treason or other Felony: The words of the Statute are.

Item, Whereas divers Opinions have been before this time, in what case Treason shall be said, and in what not; the King, at the request of the Lords and of the Commons, hath made a declaration in the manner as hereafter followeth. That is to say, when a man doth compass or imagine the death of our Lord the King, of my Lady his Queen, or of their Eldest Son and Heir; or if a Man do violate the Kings Companion, or the Kings Eldest Daughter unmarried, or the Wife of the Kings Eldest Son and Heir: or if a Man do leue War against our Lord the King in his Realm, or be adherent to the Kings Enemies in his Realm, to giving them Aid and Comfort in the Realm, or elsewhere, and thereof be probably attained of open deed by people of their Condition. And if a Man do counterfeit the Kings Great or Privy Seal, or his Money: and if a man bring false Money into this Realm counterfeit to the Money of England, as the Money called \* *Lutheburgh* or other like to the said money of England, knowing the Money to be false, to merchandise or make payment, in deceit of our said Lord the King, and of his people. And if a man slay the Chancellor, Treasurer, or the Kings Justices of the one Bench or the other, the Justices in Eyre, or Justices of Assize, and all other Justices assigned to hear and determine, being in their place doing their Offices. And it is to be understood, that in the cases above rehearsed, it ought to be judged Treason, which extend to our Lord the King, and his Royal Majesty: and of such Treason the forfeiture of the Escheats pertaineth to our Lord the King, as will of the Lands and Tenements holden of others, as of himself.

\* *Luxemburg* were a kind of base coyn, to the likeness of our English money, so called because they were coined in *Lutheburgh*, which sometime was an Earldome, and after a Dukedom.

A

Although

Although nothing can concern the King, his Crown and Dignity, more than *Crimen Lesæ Majestatis*, High Treason: yet at the Request of his Lords and Commons, the

Blessed Kingly Authority of Parliament made the † *Declaration*, as is above said: and therefore, and for other excellent Laws made at this Parliament: this was called *Benedictum Parliamentum*, as it were deserved. For except it be *Magna Charta*, no other Act of Parliament hath had more honour given unto it, by the King Lords Spiritual and Temporal, and the Commons of the Realm for the

time being in full Parliament, than this Act concerning Treason hath had. For by the Stat. 1. H. c. 4. 10. reciting that, *Whereat a Parliament holden 21 R. 2. divers pains of Treason were ordained by Statute, in as much as there was no man did know how to behave himself, to do, speak or say, for doing of such pain: it is enacted by the King, the Lords and Commons, that in no time to come any Treason be judged otherwise, than it was ordained by this Statute* 25 Edward 3. The like honour is given to it by the Statute of 1 Edward 6. cap. 12. and by the Stat. of 1 Mar. cap. 1. Sess. 1. different times, but all agreeing in the magnifying and extolling of this Blessed Act of 25 of Ed. 3.

Which now we will come to, and for the better understanding thereof, and of the Book cases and other Records grounded upon the same, we will divide this Act concerning *High Treason* into several *Classes* or *Heads*, and then prosecute the same in order.

The First concerneth Death, } 1. By compassing or imagining the Death of the King, } and declaring the same by some overt deed: }  
Or, 2. By killing and murdering of the } 1. King, }  
} 2. Queen, }  
} 3. Prince, }  
} 1. Chancellour, }  
} 2. Treasurer, }  
} 3. Justices of either Bench, } In their places doing }  
} 4. Justices in Eyre, } their Offices. }  
} 5. Justices of Assise, }  
} 6. Justice of Oyer and Terminer, &c. }

The Second concerneth Violation; that } 1. The Kings Consort, or Queen. }  
is to violate, or carnally to know } 2. The King's Eldest daughter unmarried. }  
} 3. The Prince's wife. }

The Third is Levying War against the King.

The Fourth is adhering to the Kings Enemies within the Realm, or without, and declaring the same by some overt Act.

The Fifth is Counterfeiting of } 1. The Great Seal. }  
} 2. The Privy Seal. }  
} 3. The King's Coin. }

The Sixth and last, by bringing into this Realm counterfeit Money to the likeness of the Kings Coin, &c.

So as Treason is *Membrum devisum*, and these several *Classes* or *Heads* are *membra disjunctiva*. And if the Offence be not within one of these *Classes* or *Heads*, it is no Treason.

Treason is derived from [*Trahere*] which is treacherously to betray, *Trahere*, betrayed; and *Trahison*, per contractionem, Treason, is the betraying it self.

Inter leges Canuti fo. 118. cap. 81. *Proditiones halapoy pice numerabantur inter scelera jure humano et christiana.* Treason is divided into two parts, viz.

1. High Treason, *Alta prodictio*, and  
2. Petit Treason, *Prodictio Parva*.

The Latin word used in Law is *Proditio*, (*a Prodere*) and therefore cometh *Proditionis*, which of necessity must be used in every Indictment of Treason, and cannot be expressed by any other word, Periphrasis, or circumlocution.

Hath made a Declaration: This Law is for the most part declaratory of the ancient Law, and therefore this word [*Declaration*] is used. Yet the studious Reader shall observe, that in diverse Clauses it addeth to the former Law, whereunto this word [*Declaration*] will sufficiently extend.

*When a man*] This includes both Sexes. This Act is general, and therefore extendeth to some persons who claimed a Privilege to be exempted from Secular Jurisdiction. For example, *Adam de Orleton*, Bishop of *Hereford* was indicted of High Treason, for aiding the *Mortimers*, &c. with Men and Armour against King *Edward the Second*, &c. whereupon he was Arraigned, alledged, *se absque offensa Dei & Sancte Ecclesie, & absque Licentia Domini summi Pontificis, non posse, nec debere respondere in hac parte*. And thereupon the Arch-Bishops of *Canterbury*, *York*, and *Dublin*, and their Suffragans, came to the Bar, claimed his privilege, and took him away; and he was so far from Punishment, that he was afterwards translated to *Worcester*, and after to *Winchester*. But this Statute (to clear all doubts) extends to all persons, as well Ecclesiastical as Temporal, and so hath it ever since been put in execution, as we shall see hereafter in diverse cases.

There be among the Kings Records divers and many Rolls, among the which you shall find one called *Rot Contrariensium* and the Reason of the naming this Roll thus, was that *Thomas Earl of Lancaster* (a man singularly beloved) taking part with the *Barons* against King *Edward 2.* in hatred of the *Spencers*, it was not thought safe for the King, in respect of their Power and greatness, to name them *Rebels* and *Traitors*, but *Contrariens*.

The Antient Law was, that if a Mad man had killed, or offered to kill the King, it was holden for Treason, and so it appears by King \* *Inter Reges Aluredi*, cap. 4. \* *Alfreds* Law before the Conquest, and in *Beverlys* ca. Co. 4. Rep. f. 124.

*Scilicet in Superis etiam fortuna luenda est,  
Nec Veniam laeso Numine Casus habet. Ovid.*

It was provided by the Statute of the 33 H. 8. cap. 20. that if a man being *compos mentis* commit High Treason, and after accusation, &c. fall to madness he might be tryed in his absence &c. and suffer death, as if he were of perfect memory; and it was further provided, by the said Act, that if a man attainted of Treason became Mad, yet notwithstanding he should be executed. Which cruel and inhumane Law lived not long, but was repealed, for in that point 1 & 2 P. & M. c. 10. also it was against the Common Law.

A Man that is *non Compos mentis*, or an Infant within the Age of discretion, is not [a Man] within this Statute; for by intendment of Law the Execution of the Offender is for example, *ut poena ad paucos, metus ad omnes perveniat*. But such punishment can be no Example to Mad men, or Infants that are not of the age of discretion, but it would be a miserable spectacle, both against Law, and of extreme inhumanity and cruelty. And God forbid that in Cases so Penal, the Law should not be certain, and if it be certain in case of Murder and Felony, a fortiori it ought to be certain in case of Treason.

If a man commit Treason or Felony, and confesseth the same, or be thereof otherwise Convict, if afterwards he become *de non sane memorie* (*Qui patitur equidem mentis*), he shall not be called to answer: or if after Judgment he becomes *de non sane memorie*, he shall not be Executed; for it cannot be an Example to others.

All Aliens that are within the Realm of England, and whose Sovereigns are in Amity with the King of England, are within the protection of the King, and do owe a local obedience to the King, are [Men] within this Act, and if they commit High Treason against the King, they shall be punished as Traitors; but otherwise it is of an Enemy, whereof you may read at large Lib. 7. *Calvins* case fo. 6. &c. and 17, &c.

*Dact compass* or *imagining*] There was compassing or imagining the death of a Subject before, and at the time of the making of this Statute, when *voluntas reputabatur pro facto*. And so *Bracton* saith, that *Speckard voluntas, & non exitus, & nihil interest utrum quis occidat, aut causam mortis praebeat*. So that when the Law was thus held, he must cause an *imortis praebere*, &c. declare the same by some open deed, tending to the Execution of his intent, or which might be cause of death, as 15 E. 2. coram. 382. Justice \* *Spigurnel* reporteth a Case adjudged. A man's Wife



went away with her Avowtger, and they compassed the death of the of Husband, as he was riding towards the Sessions of Oyer and Terminer and Goal delivery, they assaulted him, and struck him with weapons, that he fell down as dead, whereupon they fled: the Husband recovered, and made Hue and Cry, and came to the Sessions, and shewed all this matter to the Justices, and upon the Warrant of the Justices they were taken, indicted, and arraigned, and all this special matter was found by Verdict, and it was adjudged that the man should be hanged, the woman burnt. *Quia voluntas reputatur pro facto.* So that it was not a bare compassing or plotting of the death of a man, either by word or writing, but such an overt deed, as aforesaid, to manifest the same. For if a man had compassed the death of another, and had uttered the same by words or writing, yet he should not have died for it, for there wanted an overt deed tending to the execution of his Compassing. But if a man had imagined to murder or rob another, and to that intent had become an *Insidiatur viarum*, and assaulted him, though he killed him not, nor took any thing from him, yet was it Felony by the overt deed, and there the voluntas holds. *Sed hac voluntas non intellecta fuit de voluntate nudis verbis aut scriptis per pallata, sed mundo manifestata fuit, per aptum factum, id est, cum quis dederat operam, quantum in ipso fuit, ad occidendum, & sic de similibus.*

But even in those days, in the Case of the King, if a man had compassed or imagined the death of the King (who is the head of the Common-wealth) and had declared his compassing, or imagination by words or writing, this had been High Treason, and a sufficient overtur by the antient Law. And herewith agree all the antient Books, *Glanvil. lib. 14. c. 14. Bract. lib. 3. f. 118, 119. Britton f. 16. 39. Fleta. lib. 1. cap. 21.* and the *Minor. c. 1. §. 5. c. 2 §. 11.*

I will give you, in respect of Reverend Antiquity, a President of an Appeal (which then, and after was in use) of High Treason, *En pleine plampar, & c. en temps Roy Edmond en cestes parolix Rocelyn icy dit vers Walligrot il lonque que a tiel jou. tiel Anno del Reign de tiel Roy, entiel lieu vient celui Walligrot a ces Rocelyn, & luy trova desre en compay, & en aid ensemblement ove Abeling, Thurkild, Ballard, & autres de fair prisoner, ou en tache pur occire nostre Seignior le Roy Edmond, ou en autre maner pur coupe felonousment, & a ceo fair: fuer entreins a ceo councel Celx, & a ceo felony issint for nir solenque leur poier.* By all which it is manifest, that compassing, machinating, counselling, &c. to kill the King, though it hath no other declaration thereof but by words, was high Treason by the Common Law.

There lay an Appeal of High Treason by the Common Law, either in Parliament before the Statute of *H. 4.* or in such of the Kings Courts as have Jurisdiction thereof triable by battle or verdict. But now no appeal of Treason can be in Parliament, but is ousted by the Statute *1. H. 4. c. 14.*

An Act done *per infortunium*, without compassing, intent, or Imagination, is not within this Act, as it appears by the expresse words of it. *Et actus non facit reum, nisi mens sit rea,* and if not within the words of this Act, then it cannot be adjudged Treason, until it be declared Treason by Parliament.

This Compassing, Intent, or Imagination, though secret, is to be tried by the Peers, and to be discovered by circumstances precedent, concomitant, and subsequent, which all indicate evermore for the safety of the King. This was the case of Sir Walter Firrel, a French Knight, who the 1st. of August, Anno 13. Will. 2d. Anno Dom. 1100 being a hunting with the King in the New Forrest, was commanded by the King to shoot at a Hart, *Extorps telum, volatile, & obstante Arbore in obliquum reflexum faciens, pro medio Cordis Regem laucavit, qui subito mortuus cecidit.* It appeareth by the Customs of Normandy, treating of Treason, and the exposition of the same, that this Act was not Treason. To calculate, or seek to know by setting of a figure, or Witchcraft, how long the King shall reign or live, is no Treason, for it is no compassing, or imagination of the death of the King, which in this Statute of *2. E. 3.* as appears by the Judgment of the Parliament in *23. Eliz. cap. 2.* whereby this offence was made Felony during the life of Queen Elizabeth, which before was punishable by Fine and Imprisonment.



*The Death.*] \*He that declareth by Overt Act to depose the King, doth a sufficient Overt Act to prove that he compasseth and imagineth the Death of the King, and so it is to Imprison the King, or to take the King into his Power, and manifest the same by some Overt Act, this is also a sufficient Overt Act for the intent aforesaid. 1 H. 4. 1. 19. H. 6. 47. 13. H. 8. 12.

\*13 Eliz. c. 2. Brook tit. Treason 24. 14. Eliz. c. 1.

*Of our Lord the King.*] These words include all Successors as it has been always taken.

*The King.*] Is to be understood of a King Regnant, and not of one that hath but the name of a King, or a Nominative King, as it was resolved in the case of King Philip, who married Queen Mary, and was but a Nominative King, for Queen Mary had the Office and Dignity of a King, and though she wanted the name of a King, yet she was within this Act of 25 E. 3. and he that had the Name and not the Office and Dignity of the King, was not within it. Therefore an Act was made, that \* to compass or imagine the Death of King Philip &c. during his Marriage with the Queen Mary, was Treason. But a Queen Regnant is within these words, *Our Lord the King.*

3 Mar. Dier. 131. pl. 7.

\*1 & 2 Ph. & M. cap. 10.

This Act is to be understood of a King in possession of the Crown and Kingdom. For if a King be Regnant in possession, though he be *Rex de facto & non de jure*, yet is he *Our Lord the King*, within the purview of this Statute, and the other that hath right, and is out of possession, is not within this Act. And if Treason be committed against a King *de facto & non de jure* and after the King *de jure* cometh to the Crown, he shall punish the Treason done to the King *de facto*, and a pardon granted by a King *de jure*, that is not also King *de facto*, is void.

Vid. 11. H. 7. c. 1.

4 E. 4. 1. 9 E. 4. 1, 2.

If a Crown descend to a rightful Heir, he is King before Coronation; for by the Law of England there is no *Interregnum*: And Coronation is but an Ornament and Solemnity of Honour. And so it was resolved by all the Judges Hil. 1. Jac. in the case of Watson and Clerk, Seminary Priests. For by the Law there is always a King; in whose name the Laws are to be maintained and executed, otherwise Justice should fail.

9 E. 4. 1. B.

It appears by *Briton*, that to compass the Death of the Father of the King is Treason, and so was the Law holden long after that: For after King E. 2. had dismissed himself of his Kingly office, and his Son by the Name of E. 3. was Crowned, and King Regnant whose cursed Cairiffs, Thomas Gourney and William Ocle and others, were attainted of High-Treason for murdering the Kings Father, who had been a King by the name of E. 2. and had Judgment to be drawn, hanged and quartered.

Rot. Parl. 4 E. 3. m. 5. eodem Rot. nu. 3 and 4.

The like Judgment was given against Sir John Matrevers Kt. and others, as being guilty of the death of the Kings Uncle, Edmund Earl of Kent, who at that time (being so near to the Blood Royal) was by some holden also Treason: But now this Act of 25 E. 3. hath restrained High Treason in case of Death, to our Lord the King, His Lady the Queen, or to their eldest Son and Heir.

And now I am discoursing of the Judgments of such Criminals, I think it will not be needless for me to set you down the Judgment it self in High Treason, and shew you how agreeable and consonant it is to the direction in Holy Scripture.

*Ex super hoc visis, & per Curiam hic intellectis omnibus & singulis promissis, consideratum est quod predictus Romanusque fircas de T. 1. Trahatur, & 2. ibidem suspendatur per collum, & vivus ad terram prosteratur, & 3. interiora sua extra ventrem suum capiantur, ipsoque vivente comburantur, & 5. caput suum amputetur, quodque 6. corpus suum in quatuor partes dividatur, ac 7. quod caput & quarteria illa ponantur ubi Dominus Rex ea assignare vult. Pl. Com. 387. b. vid. Stanf. 182. d. e. lib. intra Co. 361. lib. Judic. cap. 19. v. 29, 30. 19 H. 6. 47. trahere, pende, & disclose, Brac. l. 3. f. 118. b. Crimen laesa Majestatis ut si contra personam ipsius Regis sit presumpsum, quod quidem Crimen omnia alia crimina excedit quoad penam, id. lib. 3. f. 104. b. maketh mention of execution, laqueo & securi, Parl. 21 R. 2. int. placit. Coron. nu. 50.*

In this Judgment is implied, 1. The Forfeiture of all his Mannors, Lands, Tenements and Hereditaments in Fee simple or Fee Tail, of whomsoever they be holden, 35 H. 8. Br. Forfeit. 99.

2. His Wife to loose her Dower.
3. He shall loose his Children (for they become base and Ignoble.)
4. He shall loose his Posterity, for his blood is stained and corrupted, and they cannot inherit to him or any other Ancestor. And this corruption of Blood is so high, that regularly it cannot be absolutely salved but by Authority of Parliament, 1 *Inst.* 391.b.
5. All his Goods and Chattels, &c. And good reason is it that his Body, Lands, Goods, Posterity, &c. should be torn, pulled asunder and destroyed, that intended to tear and destroy the Majesty of Government.

And now we shall see that all these several Punishments for Treason are found in the Holy Scriptures.

I. *Drawing*, 1 *Kings* 2.28. &c. You will find how *Joab* was drawn, &c.

II. *Hanging*, 2 *Esth.* 21, 22, 23. In those days (while *Mordecai* sat at the Kings gate) two of the Kings Chamberlains, *Bigthan* and *Teresb*, of those which kept the door, were wroth, and sought to lay hand on the *K. Ahasuerus*, and the thing was known to *Mordecai*, who told it unto *Esther* the Queen, and *Esther* certified the *K.* thereof, in *Mordecai's* name. And when Inquisition was made of the matter, it was found out; therefore they were both hanged on a Tree.

III. *Bowelling*, *Acts* 1.18. *Judas* purchased a field with the Reward of Iniquity, and falling headlong, he burst asunder in the midst, and all his bowels gush'd out.

IV. The Heart, &c. while he lived, 2 *Sam.* 14.15. And *Joab* took three Darts in his hand, and thrust them through the heart of *Abisalom*, while he was yet alive in the midst of the Oak, and Ten young Men that bare *Joabs* Armour, compassed about and smote *Abisalom*, and slew him.

V. *Beheaded*, 2 *Sam.* 20.22. And *Joab* answered and said, far be it from me, that I should swallow up or destroy; the matter is not so: But a man of Mount *Ephraim*, *Sheba* the Son of *Bichri* by name, hath lift up his hand against the King, even against *David*; deliver him only, and I will depart from the City, and the woman said unto *Joab*, behold, his head shall be thrown to thee over the Wall: Then the Woman went unto all the people in her wisdom, and they cut off the head of *Sheba*, &c.

VI. *Quarters hanged up*, 2 *Sam.* 4.12. And *David* commanded his Youngmen, and they slew them, and cut off their hands and their feet, and hanged them up over the Pool in *Hebron*, &c. Corruption of Blood, and that the Children of a Traytor should not inherit appeareth also by holy Scripture.

VII. *Their Memory to rot and perish*, 109. *Psalms* 9, 10, 11, 12, 13. Let his Children be fatherless, and his Wife a Widow, let his Children be continually Vagabonds and beg; and let them seek their Bread also out of their desolate places. Let the Extortioner catch all that he hath, and let the Stranger spoil his Labour. Let there be none to extend mercy to him; neither let there be any to favour his fatherless Children. Let his Posterity be cut off, and in the generation following let their name be blotted out.

The Judgement of a Woman for high Treason is to be drawn and burnt 25 *E.* 3. 42.b.

*Com. Caesar ante Christum natum 1600 annis vid. Graec. lib. 3. f. 104. b. 105. a.* *Coron.* 130. *Brit. cap.* 8. f. 16. b. accord. \* *De morte mariti si comperitum est uxorem, &c. Igni Britanni interficiunt*, Sir *Andrew Harkley*, Earl of *Carlisle* convicted, degraded and attainted of Treason, *Hil.* 18. *E.* 2. *coram Rege. Rot.* 34, 35. *Walsingh.* f. 118.

But to leave this digression and return to the Act it self, and the words wherewith we left off, viz. *Our Lord the King.*

One doth marry a Queen Regnant, if the Husband compass (1. *Inst.* 133. b.) the death of the Queen, and declare the same by Overt Act, he is guilty of Treason and punishable by this Act for to this and many other purposes she is a distinct person by the common Law. And so if a Queen wife of a Regnant King compass the death of the King, and declare the same by Overt Act, she is guilty of Treason, and punishable by this Act: If any do compass the death of the Queen and declare it by any Overt Act, the very intent is Treason, as in the case of the King. 1 *Inst.* 133. b.

There was an Act made in 28. *H.* 8. making it Treason for marrying, &c. with any of the blood Royal within certain degrees, but that is repealed.

*Kil.*

Killing by Poyson was an Offence so odious, that by Act of Parliament it was made High Treason, and inflicted a more grievous and lingering death than the common Law prescribed, viz. That the Offender should be boyled to death in hot water, upon which Statute *Margaret Dary* a Young woman, was attainted of high Treason for poysoning her Mistris, and some others were boyled to death in *Smithfield*, the 17th. day of *March* in the same year. But this Act was too severe to live long, and therefore was repealed by 1 E. 6. c. 12 and 1 Mar. c. 1.

Vid. 22. H. 8. c. 9. Dyer. 33. 8.  
fo 50. a. Saccoriba ca.

In 3 R. 2. Two Citizens of London, *John Kerby Mercer*, and *John Algore Grocer*, conceiving mallice against *John Imperial* *Janevois* of St. *Mary* in *Genoa*, that came as Ambassador from the State of *Genoa* to the King (under the Kings Letters of safe conduct, for alliance to be had between the King and the Duke and Commonalty of *Genoa* aforesaid) for that the said *John Imperial* had obtained a Monoply to furnish this Land (keeping his Staple at *Southampton*) of all such wares as came from the *Levant*, so plentifully as was to be had in all the *West* parts of *Christendom*, the said *John Imperial* was killed by them, as more at large appears by the Record. And though the said *John Imperial* was an Ambassador under the King's safe conduct, and the killing was *justi belli causa*, yet the killing him was no Treason, because it was not under any of the said heads, until it was at that time declared by Parliament in these words, *quel case examine & dispute inter les Seignior & Commons, & puis monstre al Roy en plein Parlement, estoit illonges deunt nre Seignior le Roy declares, determinus & assentus, que teil fait, & coupe est Treason, & crime de Royal Majestie blemye, en quel case il ne doit allower a nulluy priviledge del Clergie, and accordingly the said Kerby and Algore were attainted of High Treason in the Kings Bench.* But this declaration is taken away by the Stat. of 1. *Marie*.

Rot. Parl. 3. R. 2. m. 18. vid.  
plac. cor. Reg. Hil. an. 3. R. 2.  
(Cavendish) rot. 8. Lond.  
Hil. Chron. 3. R. 2. pa. 422.  
60. b. & c.

*Honor legati, honor mittentis est, & prejis dedecus redundat in Regem.*

In 22 E. 3. About 3 years before the making of this Statute, one *John at Hill* had murdered *A. de Walton*, the Kings Ambassador *nuncium Domini Regis miss. ad mandatum Regis exequendum*, this was adjudged high Treason, for which he was drawn, hang'd, beheaded, for true it is, *quod Legatus ejus vici fungitur, a quo destinatur, & honorandus est sicut ille cuius vicem gerit, & legatos violare contra jus gentium est.* But by this 25. E. 3 its restrained to death of Our Lord the King, and therefore *Prærex* is not within this Statute.

*His Companion the Queen.*] This was used, the compassing, &c. must be during the Marriage with the King, for after the Kings death she is not his Companion, and therefore it extends not to a Queen Dowager.

*Their Eldest Son and Heir.*] The Eldest Son and Heir of a Queen Regnant is within this Law. Before this Statute some did hold, that to compass the Death of any of the Kings Children was Treason. But by this Act it is restrained to the Prince, the Kings Son, being Heir apparent to the Crown for the time being: and he need not be the first begotten Son, for the second, after the Deceale of the first begotten without issue, is Eldest Son within this Act: & sic de ceteris. If the Heir apparent to the Crown be a Collateral Heir apparent, he is not within this Statute, till declared by Parliament as it was in the Duke of *York* Case.

*Roger Mortimer*, Earl of *March*, was 11. R. 2. 1487 proclaimed Heir Apparent, 39. H. 6. *Richard* Duke of *York* was likewise proclaimed Heir Apparent, and so was *John de la Poole*, Earl of *Lincoln* by R. 3 and *Henry* Marques of *Exeter*, by *Henry the Eight*. But more of these, or of the like, were or are within the purview of this Act.

*Heir.*] Is here taken for Heir Apparent, for he cannot be Heir in the life of the Father.

*If a man do violate the Kings Companion.*] The *Mirror* says, *Crime de Majestie vers le Roy, ceux Avowterers que espergissent la Feme le Roy, Mirr. c. 1. Sect. 5. Brit. c. 23. p. 43.* that is Treason against the King, is by those Avowterers that defile the Kings Wife, whereby it appeareth that this was High Treason by the common Law.

*Violare* is here taken for carnaliter cognoscere, and it is no Treason, unless done during the Marriage with the King, and extendeth not to a Queen Dowager. And if the Wife of the King doth yield and consent to him that commits this Treason, it is Treason in her.

33. H. 8. c. 21. pasch. 28. H.  
8. *Spilman* Reports in ca.  
of *Q. Ann.*



*Or the Companion of their Son and Heir.*] This also extends to the Wife of the Prince, during the Coverture between them, and not to a Dowager, and if the Wife yield and consent to him that commits high Treason, it is Treason in her.

*Or the Eldest Daughter not Married.*] That is unmarried at the time of the Violation, although there had been an Elder Daughter than she, dead without Issue. The Mirror, *Avowterors que spergissent la file du Roy eignes legitime, avant ceo que el marie*, so that this was then Treason at common Law. The reason the Eldest only is here mentioned, is for that for default of Issue Male, she only is Inheritable to the Crown.

*Or if a man do Levy War against our Lora the King*] This was high Treason by the common Law, for no Subject can Levy War within the Realm, without Authority from the King, (*Glanvil. Brac. Brit. Flet. Mirror.*) for to him it only belongeth. *vid F.N.B. 113.a. le Roy de droit doit sauver & Defender Son Realme vers enemies, &c.*

1. Mar. 98.b. Dyer in Sir N. Throgmorton's ca. vid. 21. E. 3. 23. 2. R. 2. ca. Repeal. 1. H. 4. C. 3. 8. E. 3. 20.

A Compassing or Conspiracy to Levy War is no Treason, for there must be a Levying War *in facto*, But if many Conspire, &c. and some of them do Levy the same according to the Conspiracy, 'tis high Treason in all, for in Treason all are principals, and War is Levied.

'Tis a standing Rule in Law, that, *in alta prodicione nullus potest esse Accessorius, sed principalis solummodo*. And therefore whatsoever Act or Consent will make a Man accessory to a felony before the Act done, the same will make him a principal in case of High Treason.

High Treason is either by the common Law, or by Act of Parliament, we will have an Example of both.

A. Counterfeits the Kings Coin, *viz.* Shillings, and C. knowing it, receives A and comforts and aids him, this counterfeiting is High Treason by the common Law in A. and yet it hath been holden, that in this case C. hath not committed Treason; for they say, in case of Felony, a Receiver of a Felon, after the felony done, knowing him to be a Felon, is no principal, but an Accessory, and for that there is no Accessory in Treason, therefore C. in the case before committeth no Treason, for then in Judgment of Law he must be a Counterfeiter of the Kings Coin within the 25 E. 3. which he is not, and therefore they say, it is a *casus omissus*, and not within any of the Classes or Heads of this Statute, but all agree, that procurers of such Treason to be done before the fact is done, if after the fact be done accordingly in case of Treasons, are *principals*; for they are *participes Criminis*, in the very Act of Counterfeiting. *Mich. 12, 13. Eliz. 1. 296. Dier. Conierscase.*

But we hold that † if any man commits High Treason, and thereby becomes a Traitor, if any other man knowing him to be a Traytor, do receive comfort and aid him, he is guilty of Treason, for that there be no Accessories in High Treason. And so resolved in the case of *Abingdon*, (*Pasch. 4. Jac.*) who received, &c. *Henry Garnet*, superior of the Jesuits, knowing him to be Guilty of the Powder Treason, and accordingly *Abingdon* was Indicted and Attainted of High Treason.

And where it is said that the case above of Counterfeiting the Kings Coin, was Misprision of Treason; that cannot be, because there was a Consent and not a Concealment only, otherwise High Treason, being the highest Offence, should have more favor than Felony, for the Receiver and Comforter in case of Felony is punished by death, and so is not he that committeth Misprision of Treason, and lastly this is no new Treason, but a partaking and a maintaining of the old.

If any Levy War do expulse Strangers, deliver men out of Prisons, remove Councilors, or against any Statute, or to any other end, pretending Reformation of their own heads without Warrant, this is Levying War against the King, because they take upon them Royal Authority, which is against the King.

There is diversity between Levying of War, and committing of a great Riot, Rout, or an unlawful Assembly.



If three or four or more do rise to burn, or pull down an Inclosure in *Dale*, which the Lord of the Mannor of *Dale* hath made in that particular place; this, or the like is a Riot, a Rout, or an unlawful Assembly and no Treason. But if they had risen on purpose to alter Religion established within the Realm, or Laws, or to go from Town to Town generally, and to cast down Inclosures, this is a levying of War (though there be no great Number of the Conspirators;) within the purview of this Statute, because the pretence is publick and general, and not private and particular. And so Resolved (*Pasch. 39 Eliz.* by all the Judges of *England.*) in the Case of *Richard Bradshaw Miller, Robert Burton*, and others of *Oxfordshire*, whose case was, that they conspired and agreed to assemble themselves with so many as they could procure at *Enslow-Hill* in the said County, and there to rise, and from thence to go from Gentlemans house to Gentlemans house, and to cast down Inclosures, as well for Inlargement of High-ways as of Arable Lands. And they agreed to get Armour and Artillary at the Lord *Norris* his house, and to wear them in going from Gentlemans house to Gentlemans house for the purpose aforesaid, and to that purpose they perswaded divers others: and all this was confessed by the Offenders. And this was a Compassing and intention to levy War against the Queen (because the pretence was publick) which in the Statute of the 13 *Eliz. c. 1.* and the Offenders were Attainted and Executed at *Enslow-Hill*.

Rot. Parl. in Cro. Epi-  
phan. 20 E. 1. Rot. 23.  
*Humfrey de Bobun* case 4  
*Eliz.* 210. b. *Dyer.* vid.  
Stat. 1 Mar. c. 2. by which  
grand Riots in some cases  
be made Felony.

And this diversity is proved by a latter branch of this Act 25 *Ed. 3. cap. 2.*

And if per case any man of this Realm ride armed coverly or secretly, with men of arms against any other to slay him, or rob him, or to take and keep him till he hath made Fine or Ransome for his deliverance, it is not the intention of the King and of his Councel, that in such case it be adjudged Treason, but it shall be adjudged Felony, or Trespas according to the Laws of the Land antiently used. Hereby it appears, that bearing of Arms in warlike manner for a private revenge or end, is no levying of War against the King within this Statute. So that every gathering of Force is not High Treason, Resolved so in Parliament, Rot. Parl. 5 *H. 4. nu. 11, 12.* the Earl of *Northumberland* Case.

By 13 *Eliz. cap. 1.* It is Enacted, Declared, and Established, that during the natural life of *Queen Elizabeth*, if any within the Realm or without, should compass, imagine, invent, devise or intend to levy War against her Majesty within this Realm, or without, and the same declare by writing or word, &c. it should be High Treason. So that during her life, a Conspiracy to levy War was High Treason, though no War was levied, and upon this Law it was, that *Bradshaw, Burton, &c.* were attainted, &c. for Conspiracy, &c. But it was resolved as I said before by all the Judges of *England*, that it was no Treason within the 25 *Ed. 3.* The words are in this Law, [levy War:] An actual Rebellion or Insurrection is a levying of War within this Act, and by the name of levying War is to be expressed in the Indictment. If any with strength and weapons invasive and defensive, doth hold and defend a Castle or Fort against the King and his Power, this is levying of War against the King within this Statute.

Resolved by all the Judges of *England* in the Reign of *Hen. 8.* that an Insurrection against the Statute of Labourers, for the inhaning of Salaries and Wages, was a levying War against the King, because it was generally against the Kings Laws, and the Offenders took upon them the Reformation thereof, which Subjects by gathering of Power ought not to do.

It was specially found, that divers of the Kings Subjects did minister and yeild, Victuals to *Sir John Oldcastle* Knight and others, being in open War against the King, and that they were in Company with them in open War, but all this found to be *pro timore mortis, & quod recesserunt quam cito potuerunt*: and adjudged no Treason, because it was for fear of death. And therefore this in them was no levying, &c. within this Act.

Or be Adherent to the Enemies, &c.] That is, as it is here explained, in giving aid and comfort to the Kings Enemies within the Realm or without.

Delivery or Surrender of the Kings Castles, or Forts by the Kings Captains thereof to the Kings Enemy, within the Realm or without for reward, &c. is an Adhering, &c. and consequently Treason by this Act.

*A.* is out of the Realm at the time of a Rebellion within *England*, and one of the Rebels fly out of the Realm, whom *A.* knowing his Treason doth aid or succour, this is no Treason in *A.* by this branch of 25 *Ed.* 3. because the Traytor is no Enemy; and this Statute is taken strictly: *vid.* 13 *Eliz.* Dy. 298.

43 Aff. 28, 29. 33 H. 6. 1. To the Enemies.] *Inimicus* in legal understanding is Hostis, for the \* Subjects of the King though they be in open War or Rebellion against the King, yet are not the Kings *Enemies*, but *Traytors*; for *Enemies* are those that are out of the Allegiance of the King, 19 B. 4. 6. a. & b. 4 Mar. Treason. br. 32. 1. Mar. ib. 24. 21. E. 23. 22 Aff. P. 49. 13 *Eliz.* Dy. 298. King,

If a Subject joyn with a Forreign Enemy, and come into *England* with him, he shall not be taken Prisoner here, and ransomed, or proceeded with as an Enemy shall, but shall be taken as a Traytor to the King.

An Enemy coming into open Hostility into *England* and taken, shall be either executed by *Martial Law*, or ransomed; for he can't be indicted of Treason, for that he was never within the Protection or Legeance of the King, and the Indictment runs *contra Legentiam suam debitam.* Dy. fo. 145. a. lib. 7. fo. 6. *Calvins case.*

*David Prince of Wayles* levied War against *Ed.* 1. This was Treason, for he was within the Homage and Legeance of the King, and had Judgment as a Traytor, and not as an Enemy. *Flet. lib.* 1. c. 16. And though in many Presidents of Indictments Subjects that be Rebels and Traytors, &c. be called *Proditores* & *Inimici*, yet within this Statute, they are not *Inimici*.

In the Duke of *Norfolks Case*, the question was, a League being between the Queen of *England* and the King of *Scots*, whither the Lord *Herise* and other *Scots* in *aperto praelio*, burning and wasting divers Towns in *England*, without the Assent of the King, were Enemies within this Statute, and resolved that they were.

*Or elsewhere*] i. e. out of the Realm of *England*. But then how should this Forreign Treason be tried? some of our Books do answer, that the offender shall be indicted and tried in this Realm where his Land lieth, and so adjudged in 2 *H.* 4. but now by 35 *H.* 8. c. 2. yet in force, all offences made or declared, or hereafter made and declared Treasons, Mispriisons of Treason, and concealments of Treason, committed out of the Realm of *England*, shall be inquired of, heard and determined, either in the Kings Bench, or before Commissioners in such Shire, as shall be assigned by the King. See more in Co. 1. *Institutes* 261. b.

If before Commissioners, it has been commonly used that the King, doth write his Name in the upper part of his Commission. But in the case of *Patrick O Cullen*, an Irishman, for a Treason at *Brussels* in *partibus Transmarinis* the Queen did put her Signature to the Warrant to the Lord Keeper, and not to the Commission. And either way was held by the Justices to be a sufficient assignment by the King, within the Statute 35 *H.* 8.

Resolved by all the Judges, that for Treason done in *Ireland*, the offender may be tried by the Statute. 35 *H.* 8. in *England*, because the words of the Statute are, all Treasons committed out of the Realm of *England* and *Ireland*, is out of the Realm of *England*. And so resolved in Sir *John Parrots* case, see *Pasch.* 2 *H.* 4. *Coram Rege* Rot. 8. Salop Treason in *Wales*. 33 *El.* in *Ormeys* ca. lib. 7. fo. 23. *Dyer* f. 360. lib. 11. f. 63. *D. Fofiers* ca. *Stauf.* pl. Cor. 90.

All Treasons done upon the Sea shall be inquired, heard, and determined in such Shires and places of the Realm as shall be limited by the King's Commission, in like form and condition as if done upon the Land, &c. after the common course of the Laws of this Land, and by the preamble it appears, that it could not be tried by the Common Law, but by the Civil before the Lord Admiral. 28 *H.* 8. ca. 13. *This Act not taken away* by 35 *H.* 8. c. 2. *vid.* 3. *lat.* ca. 49. fo. 113.

And thereof be probably attainted of open deed by people of their condition.] In this Branch 4 things are observable.

1. The word *probably*, i. e. upon direct and manifest proof, not upon conjectural presumptions, or inferences, or strains of Wit, but upon good and sufficient. This word, the King, Lords and Commons in Parliament did use, for that the offence was so heinous,

ous, and so heavily and severely punished, as none other the like, and therefore the Offenders must probably be attaint, which words are as forcible as upon direct and plain proof, 1 E. 6. c. 12. *ult* clause.

2. *Attaint.*] This necessarily implies that he be proceeded with and attainted according to the due course and proceedings of Law, and not by absolute power, or by other means, as in (*Rot. Parl.* 33 E. 1. *Rot.* 6. *Salvyns case*) former times had been used.

If a man adheres to the Enemies of the King, or be slain in open War against the King, or otherwise dye before the Attainder of Treason, he forfeits nothing, because (as this Act saith) he is not attainted. Herein this Act hath altered that which before, in case of Treason, was taken for Law. And the 34 E. 3. c. 12. saves nothing to the King but what was in *Esse*, and pertaining to the King at the making of that Act. And this appears by a Judgment in Parliament 29 H. 6. c. 1. that *Jack Cade*, being slain in open Rebellion could no way be punished, or forfeite any thing, and therefore was attained by that Act of High Treason.

3. *Of open deed.*] This strengthens the former exposition the word [*probably*] that it must be by open Act, manifestly proved. As if divers conspire the death of the King, and the manner how, and thereupon provide Weapons, Powder, Poyson, Assay harness, send Letters, &c. for execution of the Conspiracy. Also preparation by some overt Act, to depose the King, or take the King by force and strong hand, and to imprison him, till he has yielded to certain demands, this is a sufficient overt Act to prove the compassing and imagination of the death of the King: for upon the matter this is to make the King a Subject, and to dispoil him of his Kingly Office of Royal Government, and so resolved by all the Judges, *Hill.* 1. *Jae.* in the Case of the Lord *Cobham*, Lord *Gray*, and *Watson* and *Clark* Seminary Priests. And so resolved by the Judges likewise, *Hill.* 43 *Eliz.* in the case of the Earls of *E.* and *S.* who intended to go to the Court where the Queen was, and to have taken her into their Power, and to have removed divers of her Council, and for that end assembled a multitude of people, this was a sufficient overt Act for compassing the Queens death. And so by woful experience in former times it hath fallen out, in the Cases of King *E.* 2. *R.* 2. *H.* 6. and *E.* 5. that were taken and imprisoned by their Subjects.

If a man be arraigned upon an Indictment of High Treason, and refuse to answer according to Law, or stand mute, he shall have such Judgment, and incur such forfeiture, &c. as if he had been convicted by Verdict or Confession, (1 *Inst.* 391. a.) for this stands well with the *probably*, for *fatetur facinus qui iudicium fugit*. But 'tis otherwise in Case of Petit Treason, Murder or other Felony, for if the party upon his arraignment refuse to answer according to Law, or say nothing, he shall not be adjudged to be hanged; but for his contempt, to *paine fort & dure*, which works no attainder for the Felony, nor forfeiture of his Lands, or corruption of blood. *Stanf. pl. Cor* 139, 185, 150. *Dy.* 205. a.

If a Subject conspire with a Forreign Prince beyond the Seas to invade the Realm by open Hostility, and prepare for the same by some overt Act, this is a sufficient overt Act, by this Statute, for the death of the King 13 *El.* *Dy.* 298. 13 *El.* c. 1.  
\* *Qui Capiti, aut Saluti Regis perfidiosa sive Solus, sive servus aut* \* *Inter Leges Alveredi* cap. 4.  
*ficariis mercede conductis stipatus, in sidiavitur, vita & fortunis ejus*  
*omnibus privator.*

The Connexion of the words are to be observed, *viz.* [*whereof be* † So resolved by the Judges  
*attainted by overt deed.*] † This relates to the several and distinct ges pasc. 35 *Eliz.*  
Treasons before expressed, (and especially to the compassing and imagination of the death of the King, &c. for that it is secret in the heart) and therefore one of them cannot be an overt Act for another. For instance: A Conspiracy is had to levy War: this (as has been resolved) is no Treason by this Act, till actually levied, therefore no overt Act, or manifest proof of the compassing of the death of the King within this Act.

Divers latter Acts of Parliament have ordained, that compassing by bare words or sayings should be High Treason; but they're all either repealed, or expired. 26 H. 8. c. 13. 1 E. 6. c. 13.  
1 & 2 Ph. & Ma. c. 9. 10.  
1 *El.* c. 6. 13 *El.* c. 1. &c.  
14 *Eliz.* cap. 1.

And the wisdom of the makers of this Law, would not make words only to be Treason, seeing



seeing such variety among the Witnesses are about the same, as few of them agree together, but if the same be set down in writing by the Delinquent himself, this is a sufficient overt Act within this Statute.

Cardinal Pole, though a Subject to Henry 8. and of the blood Royal (being descended from George Duke of Clarence, Brother to Edward the fourth) yet he, in his Book of the Pope's Supremacy, written about 27 H. 8. incited Charles the Emperour then preparing against the Turk, to bend his force against his Natural Sovereign Lord and Country; the writing of which Book was a sufficient overt Act within this Statute.

4. By People of their condition.] That is, *pro pares*, or their equals. The general division of Persons by the Law of England is either one that is Noble, and in respect of his Nobility, of the Lords House of Parliament, or one of the Commons of the Realm, (*Brit. cap. 2. p. 36.*) and in respect thereof, of the House of Commons in Parliament and as there be divers degrees of Nobility, as Dukes, Marquesses, Earls, Viscounts, and Barons, and yet all of them are comprehended within this word *Pares*, so of the Commons of the Realm, there be Knights, Esquires, Gentlemen, Citizens, Yeomen, and Burgeses of several degrees, and yet all of them of the Commons of the Realm, and as every of the Nobles is one a Peer to another, though he be of a several degree, so is it of the Commons: and as it hath been said of men, so doth it hold of Noble Women, either by Birth, or by Marriage.

This Branch [*by people of their condition.*] extends only to a conviction by Verdict, whereof the Statute particularly speaks; but yet where the party indicted confesseth the Offence or standeth mute, he shall have Judgment as in case of High Treason. For this branch being affirmative, is taken *cumulative*, and not *privative*. And therefore seeing upon confession, or standing mute, the Judgment in case of High Treason was given at the Common Law, this Act being, as hath been said, affirmative, taketh not away the same: And (to say once for all) the clause hereafter of restraint of like cases, &c. extends only to offences, and not to tryals, Judgments or Executions.

Brac. lib. 3. f. 118. Brit. p. 10. &c. Brac. lib. 5. f. 414. Flet. l. 1. c. 21. Mir. c. 1. sect. 6. de Faufonerie. 29 Aff. pl. 49.

If a man Counterfeit the Kings Great or Privy Seal.] All antient Authors agree, this was High Treason by the Common Law, and for this Offence his Judgment was to be drawn, hanged, and quartered, at the Common Law, as in other cases of High Treason, (the counterfeiting of the King's money excepted.)

\* Antiently every Treason was comprehended under the name of Felony, but not *à contra*, and therefore a pardon of all Felonies was sometime allowed in case of High Treason. But the Law hath long since been otherwise.

If the Indictment were Felony, and not *proditore*, (for the King may lessen the Offence, if it please him) then the pardon of Felonies is good at this day, for no Indictment can be of High Treason without this word [*proditore*:] 2 R. 3. 9. Et in quolibet prodicione implicatur feloniam, quia in quolibet brevi de exigendo super quolibet in dictamento de prodicione, proclamator facit sic. J. B. an Exigent on thy head of Treason and Felony. 3 H. 7. 10. 4.

A Compassing. &c. to counterfeit the Great Seal is no Treason, but there must be an actual Counterfeiting, also it must be to the likeness of the Kings Great Seal, as the words do shew.

Now it is to be seen what shall be said, a Forging or Counterfeiting of the Great Seal. If the Lord Chancellor or Keeper put the Great Seal to a Charter, &c. without Warrant, this is not Treason, for the Seal is not counterfeted: but it seems by Briton, p. 10. b. and Fleata. fo. 29. a. that it was Treason at the Common Law: but without question, not now so, by the negative clause of this Act.

Divers Opinions have been what the Offence is, if a man take Wax lawfully imprinted with the Great Seal from one Patent, and fix it to a writing purporting a Grant from the King, in 40 Aff. p. 33. about fifteen years after this Act was made, it was not held High Treason, but a great Misprison, for that it is no counterfeiting of a new, but an Abuse of the true Great Seal. 42 E. 3. An Abbot caused his Commoigne to raise a Charter of R. 1. and this Offence was sentenced before the King and Council in the Star-Chamber as a great Offence and Misprison: but if it had been High Treason, it would have



have had another Trial, and this was a great abuse of the Great Seal.

2 H. 4. 25. The taking of the Great Seal from one Patent, and fixing it to a Commission to gather money, &c. was adjudged such an offence, as the Offender had Judgment to be drawn and hanged, which is such a Judgment as is given in case of Petit Treason.

37 H. 8. Br. tit. *Treasor.* A Chaplain had fixed such a Great Seal to a Patent of Dispenation with non residence, this holden a Misprision, and not High Treason: as an Abuse, but no counterfeiting of the Great Seal, (pl. *Coron. f. 3.*) Stanford saith it was adjudged in his time according to the Book of 2 H. 4.

*Leak*, a Clerk in Chancery joyned two clean Parchments fit for Letters Patents so close together with mouth glew, as they were taken for one, and did put one Label through both, then on the uppermost he writ a true Patent and got the Great Seal put to the Label, so the Label and the Seal were annexed to both Parchments, afterwards he took off the upper Parchment from the Label, which with the Great Seal did still hang to the Parchment; then he wrote another Patent on the blank Parchment, and published it as a good Patent. *Hill. 4 Jac.* Hereupon two questions arose, 1. Whether this Offence be High Treason, or no? and upon great advisement and consideration, it was resolved by the Justices (saving a very few) upon the Authorities above, and for that it was no counterfeiting, &c. that this Offence was neither High Treason, nor Petit Treason, for it was not within either of the branches of this Statute; but it was a very great Misprision, and so the Delinquent lived. 2. If it be High Treason, then whether he might be indicted generally, for counterfeiting, &c. or else the special fact must be expressed? and it was resolved, that if the special matter had amounted to a counterfeiting of the Great Seal in the Law within this Act, then he might have been generally Indicted of High Treason. As if a man in an Affray kill a Constable that comes to keep the Kings peace without expresse malice prepened, this is Murder in Law, and yet the Delinquent may be generally Indicted of Murder by malice prepened.

*Fleta*, who wrote before this Act, lib. 1 c. 22. tells us, that *Crimen falsi dicitur, cum quis illi cirus (cui non fuerit ad hoc data Autoritas) de Sigillo Regis rapto vel invento, & brevibus Chartasque consignaverit.* But whatsoever offence it was before this Statute was made, it was after no High Treason, because no counterfeiture of the Great Seal, but a Misfeasor.

*Qui convictus fuerat pro falsatione Sigilli Domini Regis quod tradatur Episcopo Sarum qui cum petuit ut Clericum suum sub pena & in forma qua decet, quia videtur Concilio quod in tali casu non admittenda est purgatio,* Rot. Parl. Hill. 18. E. 1. f. 92. nu. 125. &c. Hereby it should appear, that in those days a Man might have had his Clergy for this Offence; and therefore, as some hold, it was not then held to be High Treason; and herein also is the preamble of this Act concerning divers Opinions in case of Treason, verified.

This Statute naming the Great Seal, the Forging and Counterfeiting of the Privy Signet, or Sign Manuel, was not within this Statute: but by 1 Mar. c. 6. 1. & 2. Ph. & M. c. 11. it is made High Treason in both cases. Although no mention in this Act is made of Aiders and Consenters to this counterfeiting, yet they'r within the purview of it, for there be no Accessaries in High Treason. 19 H. 6. 47. 3 H. 7. 10. *Stanf. pl. Cor. 3 Dy. 296.*

*Or his money.*] This was Treason by the Common Law. *Glanv. l. 14. c. 7. Brac. 3. f. 118. Brit. f. 16. Flet. l. 1. c. 22. Mir. c. 6. Vet. Mag. Char. c. itin. f. 151. a. 22. Ass. p. 49. 3 H. 7. 10. 25 E. 3. 42. b. Coro. 130.* And therefore the opinion 3 H. 7. is held for no Law, that it was but Felony before this Act.

The Forging of the King's Coin is High Treason without utterance of it, for by this Act the Counterfeiting is made High Treason. 3. H. 7. 13. 1 R. 3. 1.

*Si ipse qui facit monetam Autoritate Regis, &c. illam facit minus in pondere vel alligata, viz. Aleumino, vel alio falso metallo contra ordinationem, &c.* 3 H. 7. 10. a. b. 'tis holden to be High Treason, and by that Book taken for a Counterfeiter of the Kings money within the purview of this Statute. And herewith agreeth *Briton. ca. fo. 10. b.*

It was ordained, that no King of this Realm might not change his mony, nor impair, nor amend

amend the same, nor other money make then of Gold or Silver, without assent of Parliament, *sans l'assent de tous les Counties.* Mir. c. 1. sect. 3. *inter artio proviels Roys ordisaux.*

Clipping, washing, and filing of the Money of this Realm, was no Counterfeiting of it within this Act. And therefore being a like case, it was declared 3 H. 5. c. 6. to be High Treason: but that Act being repealed by 1 Mar. the Statute of 5 Eliz. c. 11. hath declared, that Clipping, washing, rounding, or filing, for wicked Lucre and gain, &c. to be High Treason. And by 18. Eliz. c. 1. 'tis declared, that if any person for wicked Lucre or gains sake, shall by any art, wayes, or means whatsoever, impaire, diminish, falsifie, Scale or lighten the Kings money, &c. it is High Treason, for being a like case, it was to be declared by Parliament.

Forging or Counterfeiting of forreign Money, not current within this Realm, is Misprision of Treason, and the Offender shall forfeit, as for concealment of High Treason. 14 Eliz. c. 3.

*His Money.* This extends only to the Kings Money coined within this Realm, and therefore after this Statute, if a Man had Counterfeited the Money of another Kingdom, though current within this Realm, yet no Treason, till so declared by Parliament. 1 Mar. c. 6. 1 & 2 Ph. & M. c. 11. and the said Acts of 5 & 18 Eliz. which extend to forreign Coin current within this Realm.

And *Nota*, If any Counterfeit the Kings Coin contrary to the 25 E. 3. he shall have the punishment of his body, but as in case of Petit Treason, viz. drawn and hanged till he be dead, but the forfeiture of his Lands is as in other cases of High Treason, for this Statute is but a declaration of the Common Law, and the reason of his Cororal punishment is, for that in this case he was only drawn and hanged at the Common Law, but a woman in that case was to be burnt.

This Act of 25 E. 3. maketh no expression of the Judgment, therefore such Judgment, as was at the Common Law either in case of High Treason or Petit Treason, must be given.

The Abbot of *Missenden* in the County of *Bucks*; for counterfeiting and refection of the Kings Money, was adjudged to be drawn and hanged, and not quartered. *Mich.* 13 E. 3. *coram Rege Rot.* 55.

But if one be Attainted for diminishing of the Kings money upon any of the Statutes made in Queen *Maries* time, or in Queen *Elizaberhs*, because 'tis High Treason newly made, the Offender shall have Judgment as in case of High Treason, see for the Judgment. 1 *Inst.* sect. 747.

If a Woman commits High Treason, and be quick with Child, and she cannot upon her Arraignment plead it, but she must either plead not guilty, or confels: and if upon her Plea she be found guilty, or confels it, she cannot alledge it in arrest of Judgment, but Judgment shall be given against her: and if it be found by an Inquest of Matrons that she is quick (for *privement enfenit* will not do) it shall respite Execution till she be delivered; but she shall have the benefit of that but once, though she be again quick.

If a man bring false Money into this Realm, counterfeit to the Money of England, knowing the Money to be false. Six things are here observable.

- 1 The bringing in of counterfeit money, and not the counterfeiting.
2. That it must be brought from a forreign Nation, and not from *Ireland*, or other place belonging to, or being a Member of the Crown of *England*, (*Rot. Parl.* 17. n. 15.) and so it hath been resolved 7 H. 7. 10.
3. It must be to the Similitude of the Money of *England*
- 4 The Bringer of it into this Realm must know it to be counterfeit. 3 H. 7. 10.
- 5 Uttering of false Money in *England*, though he knew it to be false, and counterfeit to the likeness of the Coin of *England*, is no Treason within this Statute, unless he brought it from a forreign Nation, for the words are, *if a man bring*, &c. But if Money false or clipped be found in the hands of any suspicious person, he may be imprisoned till he hath found his warrant, *pro Statutum de Moneta magna vet. Mag Char. fo. 38. secunda parte*, 6. He

6. He must Merchandise therewith, or make payment thereof, expressed in these words, *to merchandize, or make payment, in deceit of our said Lord the King and of his people.*

*And if a man slay the Chancellor, Treasurer, or the Kings Justices of the one Bench or the other, Justices in Eyre, or Justices of Assize, and all other Justices assigned to hear, and determine, being in their place doing their offices.]*

Here though one intend to kill any of these named in their place, and doing their Office, and thereupon strike or wound any of them, this is no Treason: for if it be Treason, death must ensue. And the reason why it is Treason in these cases, is, because sitting judicially in their places (that is, in the Kings Courts) and doing their Office in the administration of Justice, they represent the Kings person, who by his Oath is bound that the same be done.

This Act extends only to the persons here particularly named, and to no other; and therefore it extends not to any other Court, no, not to the High Court of Parliament, if any Member of either House be slain in his place, and doing his Office. But in all those cases it is willful Murder, for the Law implieth malice.

*And it is to be understood that in the cases above rehearsed, it ought to be judged Treason, which extend to our Lord the King, and his Royal Majesty; and of such Treason the forfeiture of Escheats pertaineth to our Lord the King, as well as of the Lands and Tenements holden of others, as of himself.*

This is an Affirmance of the Common Law, and the Reason *a* Rot. Parl. 20 E. 1. n. thereof is; for that Offence is committed against the King who is *2. John de Britains ca.* the light and life of the Common wealth; therefore the Law gives the King in satisfaction of his Offence, all the Lands, &c. which the Offender hath, and that no Subject should be partaker of any of the forfeitures for this offence. *1 Kings 21. 15.*

*Lands and Tenements holden.]* The forfeiture extends to (*Bro. Escheat 9.*) Rents, charges, Seck, Commons, Corrodies, and other Hereditaments which are not holden, for in case of High Treason the tenure is not material.

This clause has seven Limitations.

1. This Act extends not to *a* Lands in tayle (saving only for the life of a Tenant in tayl) but the forfeiture of Escheats is to be understood of such Lands, and Tenements as he might lawfully forfeit. *a 7 H. 4. 27. vid. 26 H. 8. c. 13.* And these General words take not away the Statute *b* *de donis condicionalibus*; but *b* latter Statutes give the forfeiture of Estates taile. *b 26 H. 8. c. 13 in fine 33 H. 8. c. 20. 5 & 6 E. 6. c. 11. l. 7. fo. 12. & 13.*

2. It extends not to uses: but later Statutes do name uses. *33 H. 8. c. 20. 5 & 6 E. 6. c. 11.*

3. Nor to Rights of Actions, where the entry is taken away, and so is the Law clearly holden at this day. *lib. 3. f. 210. 7 H. 4. 6. & c.*

4. Nor to any conditions; but by a later Statute, Conditions unless inseparably knit to the person, are given to the King. *33 H. 8. c. 20. lib. 7. f. n. Englefields case.*

5. Nor to Right of Entry, where any was in the Lands by title before the Treason committed: but such a Right, &c. is given by later Statutes. *Englefields case ub. Sup.*

6. Nor to Lands or Tenements or Rights *c in autre droit*, as in the Right of the Church, nor to Lands in the Right of a Wife, but only during the Coverture, and it extends to Lands which the Offender hath *d* for life, for the forfeiture of the profits during his life. *c 5 E. 6. ub. Sup. 1 Mar. Dier. 125. Dier. 12 Eliz. 289. temp. H. 8. Br. coron. 5. d 1 Mar. Dyer. 103.*

7. Nor to a *e* foundership of a House of Religion in *Frankalmoin*, for that is annexed to the blood of the Founder. Here Goods and Chattels are not named, but the forfeiture of them is employed in the Judgment. *e 24 E. 3. 33. 72. Corody. Br. 5. temp. H. 8. Escheat. 239.*

*Nota*, Reader, the Acts of 26 H. 8. 33 H. 8. 5 & 6. are yet in force, notwithstanding *1 Mar.* as hath been oft resolved and adjudged namely *Mich. 21 Jac.* in the *Exchequer Chamber* in a Writ of Error upon a Judgment in the *Exchequer* between *Ratcliff* and the Lord



Lord *Sheffield*, by all the Judges of *England*, and is agreeable to common experience.  
 12 *Eliz. Dy.* 289 *lit.* 3. *fo.* 10. 15 *lib.* 7. *f.* 33. 34 *lib.* 8. 72. 166. *lib.* 9. *f.* 14c. *Stanf. pl.*  
*Cor.* 187. *a.*

Where any person is indicted of Treason or Felony, and pleadeth to it, *not guilty*, which goeth to the fact best known to the party; tis holden that the Party in that case shall have no Council to give in Evidence, or alledge any matter for him: but forasmuch as *ex facto jus oritur* it is necessary to be explained, what matters upon his Arraignment, or after not *guilty* pleaded, he may alledge for his defence, and pray Council learned to utter the same in form of Law.

1 Upon the Arraignment what advantage he may take in case of High Treason by the Common Law: If it be for compassing the death of the King, he may alledge that in the indictment there is no such overt Act set down in particular, as is sufficient in Law, or the like. For it is to be observed, that in no case the party Arraigned of Treason or Felony can pray Council learned generally, but must shew some cause. 1 *H.* 7. 22.

2 In case of High Treason by force of any Statute, he may alledge that the Indictment being grounded upon a Statute, the Statute is either mistaken, or not pursued.

3. Of what matters he may take advantage equally concerning them both: He may alledge that there was not at the time of the Indictment of High Treason two lawful Accusers, *i. e.* two lawful witnesses. *Qui accusat integra fama sit, & non Criminosus. Bract.*

4. Of what matters he may generally take advantage in all cases of Treason and Felony. He may alledge that the Offence is not certainly alledged in respect of the matter, time, and place, or that he is not rightly named, or hath not a right addition, or that the Offences were done before the last general pardon.

5. After he hath pleaded *not guilty*, what advantage he may take upon the Evidence? He may alledge, that he ought to have two lawful witnesses in case of High Treason, to prove the fact against him.

6. He may take advantage in Arrest of Judgment, if the Verdict be found against him that the trial came not out of the right place. *lib.* 6. *fo.* 14. *Arundels case.*

And that the Prisoner may alledge these or the like matters it is evident; 9 *E.* 4. 22. because for every matter in Law arising upon the fact, the Prisoner shall have Council learned assigned him.

Also it is lawful for any Man that is in Court, to inform the Court of any of these matters, lest the Court should erre, and the Prisoner unjustly for his life be proceeded with. *Stanf. pl. Cor.* 151. *b.* 7. *H.* 4. 34.

The Reason why regularly in case of Treason and Felony, when the party pleads *not guilty*, he was to have no Council: was,

1. For that in case of life, the evidence to convince him should be so manifest, as there could be no defence against it.

2. The Court ought to see that the Indictment, Tryal, and other proceedings be good and sufficient in Law, and so be instead of Council for the Prisoner; otherwise the Prisoner by erroneous Judgment might be attainted unjustly.

And now let us see what Misprison of Treason is.



## Of Misprision of Treason.

**M**isprision cometh from the French word *Mespris*, which properly signifies neglect or contempt: for [*mes*] in composition in the French signifies *mal*, ill, as [*mis*] doth in our English Tongue, as mischance, *i. e.* ill chance; and so [*mesprise*] is ill apprehended or known. *Vid. Bract. lib. 3. f. 118. b. 119. a.*

In Legal understanding it signifieth when one knoweth of any Treason and conceal-eth it; this is *Misprision*, so called, because the knowledge of it is an ill knowledge to him, in respect of the severe punishment for not revealing of it: For the Judgment in case of Misprision of High Treason is, that the Offender is to be imprisoned during his life, to forfeit all his goods, debts, and duties for ever, and the profits of his Lands during his life. *Stanf. pl. 3. Cor. f. 28. 1 & 2 Mar. c. 10.*

And in this sence doth the Statute of 1 & 2 *Phil. & Mar.* speak: when it saith, *Be it declared and enacted by the Authority aforesaid, that concealment or keeping secret of any High Treason be deemed and taken only Misprision of Treason, and the Offenders therein to forfeit and suffer, as in cases of Misprision of Treason hath heretofore been used.*

Compallings or imaginations against the King by word, without an Overt Act, is a High Misprision. Saith Solomon, *Curse not the King, no, not in thy thought, or Conscience, &c. for a Bird of the Air shall carry the voice, and that which hath wings shall tell the matter. Ecclesiast. cap. 10. ver. ult.*

By the Common Law concealment of High Treason was Treason, as appears in the case of the Lord *Serpe* 3 *H. 5. Hill. 14. El.* cited by the Lord *Dier* in the Lord *Lumleys* case, *M.S.* and by *Bracton ubi supra.*

Tis said in 2 *R. 3. f. 9.* that every Treason or Felony includeth in it a Misprision of Treason or Felony: and in case of High Treason, he that knoweth it before it be done, and assenteth unto it, is *particeps Criminis*, and guilty of Treason: and if any would save himself, he must take the Advice of *Bracton*, (*Brac. l. 3. f. 118. a.*) to discover the same, with as much speed as conveniently he may, to the King or some of his Privy Council, or any other Magistrate; *Non enim debet, saith he, morari in uno loco per duas noctes vel per duos dies, nec debet ad aliqua negotia, quamvis urgentissima, se convertere, quia vix permittitur ei ut retrospiciat.*

If any man in *Westminster-Hall*, or in any other place, sitting, the Courts of Chancery, the Exchequer, the Kings Bench, the Common Bench, or before Justices of Assize, or Justices of Oyer and Terminer (which Courts are all mentioned in the 25 *E. 3. de proditionibus*) shall draw a weapon upon any Judge or Justice, though he strike not, this is a great Misprision, for which he shall lose his Right hand, and forfeit his Lands, Tenements, Goods and Chattels, and his body to perpetual Imprisonment: the Reason hereof is, because it tendeth *ad Impedimentum legis terre*. And this Judgment is given by the Common Law.

So likewise is it, if in *Westminster-Hall*, or any other place, sitting the said Courts there, or before Justices of Assize, or Oyer and Terminer, and within the view of the same, a man doth strike a Juror, or any other, with Weapon, Hand, Shoulder, Elbow, or Foot, he shall have the like punishment: but in that case if he make an Assault, and strike not, the Offender shall not have the like punishment.

If any strike in the Kings Pallace, when the Kings Royal Person resideth, he shall not lose his right hand, unless he draw blood; but if he draw blood, then his right hand shall be struck off, he perpetually imprisoned, and fined, and ransomed.

*Peter Burchet* Prisoner in the Tower, struck within the Tower *John Longworth* his keeper (who stood in a window reading of the Bible) with a Billet on the head behind, whereby

*Tr. 4 E. 4. Coram Rege Rot. 3. 19 E. 3. Judgment 174. Mich. 6 E. 3. Cor. Rege Rot. 55 Eborum 39 Ass. p. 1. 41 Ass. p. 25. 22 E. 3. 13. a. 41 E. 3. coron 280. Nota, the forfeiture of his Lands is during life 42 Ass. p. 18. Stamf. pl. Cor. 28. c. 3. Eliz. Dier. 188.*

*Inter leges Alverd. cap. 24. 3 Eliz. Dyer 188. 2 Jac. Bellinghams case, coram Rege, with his Elbow and Shoulder.*

whereby blood was shed, and death instantly ensued: this being without any provocation, was adjudged Murder, for which he was Attainted, and before his Execution (which was in the Strand over against Somerset house) his right hand was struck off, by force of the 33 H. 8. c. 12. for the Tower was one of the Queens standing Houses, or Pallaces.

Note, the Law makes a great difference between stroke or blow in or before any of the said Courts of Justice, where the King is representatively present, and the Kings Court, where his Royal Person resideth. For in the Kings house, blood must be drawn, which needeth not in or before the Courts of Justice, but a stroke alone is sufficient. Again the punishment is more severe in the one case than in the other: Such honour, the Law attributeth to Courts of Justice, when the Judges or Justices are doing of that which to Justice appertaineth: and the Reason is, *Quia Justitia firmatur Solium*.

But by the Ancient Laws of this Realm, striking only in the Kings Court was punished by death, *vid. Lambert inter Leges Ina. cap. 6. Inter Leges Canuti. c. 56. Inter Leges Alured. cap. 7.*

If any do rescue a Prisoner in or before any of the abovesaid Courts, committed by any of the aforesaid Justices, it is a great Misprision, for which he, and the Prisoner assenting to it, shall forfeit their Land and Goods, and their bodies to perpetual Imprisonment, but shall not lose his hand, because no stroke or blow was given. 22 E. 3. 13.

This Misprision of High Treason, for forging of Money, which neither is the money of this Realm of England, nor currant within the same. 14 Eliz. cap. 3.

'Tis Misprision of High Treason in concealing of a Bull, &c. *vid. 13 Eliz. cap. 2.*

By the Stat. of 3 & 4 E. 6. cap. 5. amongst other things in some cases it was High Treason, and in some Felony, to intend, or go about to kill or imprison any of the Kings Privy Council, &c. from which Felony the benefit of Sanctuary and Clergy was taken away: but these Treasons and Felonies are repealed by the Statute of 1 Mar. cap. 1. Sess. 1.

And to instruct the Reader the better in the knowledge of Offences, what be High Treason, what Petit, and what Misprision of Treason, I shall add here the Statute of 1 Mar. whereby it is enacted [that no Act, Deed or Offence, being by Act of Parliament, or Statute made Treason, Petit Treason, or Misprision of Treason, by words, writing, ciphering Deeds, or otherwise whatsoever, shall be taken had, deemed, or adjudged to be High Treason, Petit Treason, or Misprision of Treason, but only such as be declared and expressed to be Treason, Petit Treason, or Misprision of Treason in or by the Act of Parliament: or Statute made in the 25 year of the Reign of the most Noble King of famous Memory King Edward the Third, touching or concerning Treason, or the Declaration of Treason, and none other, &c. any Act or Acts of Parliament, Statute or Statutes had or made at any time heretofore, or after the said 25 year of King with Edward the third, or any other Declaration or matter to the contrary in any wise notwithstanding.

Before this Act so many Treasons had been made and declared by Act of Parliament since this Act of 25 Ed. 3 some in particular, and some in general, and in such sort penned, as not only the ignorant and unlearned people, but also learned and expert men were many times trapped and snared; and sometimes Treasons made or declared in one Kings time, were abrogated in another Kings time, either by special or general words: so as the mischief before 25 Ed. 3. of the uncertainty what was Treason, and what not, became to be so frequent and dangerous; as the safest and surest Remedy was, by this Excellent Act of 1 Maria, to abrogate and repeal all, but only such as are specified and expressed in this Statute of 25 Ed. 3. By which Law the safety both of the King and of the Subject, and the preservation of the Commonwealth is wisely and sufficiently provided for, in such certainty, as *nihil retitum est Arbitrio Judicis*. And certainly the two Rules recited in the Preamble of the said Act of 1 Mar. are assuredly true. The first [that the State of a King standeth and consisteth more assured by the Love and Favour of the Subject toward their Sovereign, than in the dread and fear of Laws made with rigorous

*Imprimis ut justa Leges cri-  
ganur, injusto subvertantur.  
in Amig. Id. 5.*

rigorous pains and extream punishment for not obeying their Sovereign.] And the other, [That Laws justly made for the preservation of the Commonwealth, without extream punishment or penalty, are more often, and for the most part better obeyed and kept, than Laws and Statutes made with great and extream punishment] *mitius imperanti melius paratur.* Seneca.

In which Act five notable things are to be observed.

1. It extendeth (without exception) to all High Treasons made by any Act of Parliament since the said Act of 25 E. 3.
2. Secondly to all Declarations of High Treasons by any Act of Parliament, since the said Act of 25 E. 3. (as of the said Declaration in 3 R. 2. of killing an Ambassador, and the like.)
3. To all Petit Treasons made, or declared by any Act of Parliament since the said Act of 25 E. 3.
4. Albeit Misprision of Treason is not mentioned in the Act of 25 E. 3. yet every Misprision of any Treason made or declared since that Act by any Act of Parliament is abrogated.
5. No Offence to be Treason, Petit Treason, or Misprision of Treason, but only such as be declared and expressed to be Treason, Petit Treason, or Misprision of Treason, by the said Act of 25 E. 3.

And here three things are to be observed.

1. That this word [*expressed*] excludeth all implications or inferences whatsoever.
2. Here Misprision of Treason is taken for concealment of High Treason, or Petit Treason, and only of High Treason or Petit Treason specified and expressed in the Act of 25 E. 3.
3. That no former Judgment, Attainder, President, Resolution, or Opinion of Judges, or Justices of High Treason, Petit Treason, or Misprision of Treason, other than such as are specified and expressed in the said Act of 25 E. 3. are to be followed or drawn to Example: for the words are direct and plain, [that from henceforth no Act, Deed, or Offence, &c. shall be taken, had, deemed, or adjudged to be Treason, Petit Treason, or Misprision of Treason, but only such as be declared and expressed in the said Act of 25 E. 3. &c. any Act of Parliament, or Statute after 25 E. 3. or any other declaration or matter to the contrary notwithstanding.] So as there is no High Treason, Petit Treason, or Misprision of any Treason made or declared by any Act of Parliament or otherwise, since the Act of 25 E. 3. but only such as have been made since the said Act of 1 Mar. and of those only such as were made perpetual, and not during the life of Queen Mary, or of Queen Elizabeth. Whereof there be diverse, which now are expired, though you may read them being all in Print.

1 Mar. c. 6. 1 & 2 Ph. & M. c. 11. 5 El. c. 1. & 11. 13 El. c. 2. 18 El. c. 1. 23 El. c. 1. 27 El. c. 2. 3 Jac. c. 4.

And now to conclude all: It appeareth in the Holy Scriptures, that Traytors never prospered, what good soever they pretend, but were most severely and exemplary punished. I shall give you several instances, viz.

1. Numb. 16. verse 31. 32. The Rebellion of Corah, Dathan, and Abiram, against Moses. The Text saith there by Miracle, that the Ground clave asunder that was under them; and the Earth opened her mouth, and swallowed them up and their Houses, and all the men that appertained unto Corah, and all their Goods.
2. 2 Kings 11. 16. Athaliah, the daughter of Amri, was slain by the sword, by the Command of Jchoiada the Priest.
3. Bigtham and Teresh, as you find in 2 Esther 22. and 23. fought to lay hands on the King Ahasuerus, and the thing was known to Mordecai, who told it unto Esther the Queen; and Esther certified the King thereof, in Mordicai's name, and when inquisition was made of the matter, it was found out, therefore they were both hanged on a Tree.
4. 2 Sam. 18. 14. Absalons Treason was rewarded by Joab, who took three darts in his hand, and thrust them through the Heart of Absalom.

5. What



5. What was the end of *Achisophel*? did not he do execution upon his own self? *2 Sam. 17. 23.* And when *Achisophel* saw that his Counsel was not followed, &c. he gat him home to his House, to his City, and put his Household in order, and hanged himself.

6. *Abiathar*, the traitorous High Priest against *Solomon*, had, it's true, his life given him, but he was deprived of the Priesthood. *1 Kings 2. 26, 27.*

7. Read *Shimeis* end for cursing King *David*, *1 Kings 2. 8, 9.*

8. *Zimri* for his conspiracy against *Elah*, was by *Omri* forced desperately to burn himself, *1 Kings 16. 16, 17, 18.*

9. *Theudas* began an Insurrection, and about 400 joyned themselves with him, but he was slain, and all, as many as obeyed him, were scattered, and brought to nought, read *5 Acts 36, 37.*

Peruse over all our Books, Records, and Histories and you shall find a Principle in Law, a Rule in Reason, and a tryal in experience, that Treason doth ever produce fatal and final destruction to the Offender, and never attaineth to the desired end, (two Incidents inseparable thereunto.) And therefore let all men abandon it, as the most poisonous bait of the Devil of Hell, *Qui molitur insidias in patriam, id facit, quod insanus Nauta perforans navem in qua ipse vehitur*: And let us all endeavour strictly and Religiously to observe that most wholsom and peaceable advice of the Royal Preacher, *Solomon*, *24 Prov. 21. To fear the Lord, and honour the King, and not to meddle with them that are given to change.*

**FINIS.**

